




MEMORANDUM

TO: Indiana State Board of Education

FROM: Dana L. Long, Legal Counsel 

RE: In the Matter of G.G., Ka.G., and Ky.G., and the South Bend Community School Corporation
Appeal of Expulsion Due to Lack of Legal Settlement pursuant to I.C. 20-33-8-17 and I.C. 20-26-11-15
Hearing No. 1007005

DATE: September 21, 2010

Petitioners appealed the school corporation's decision to expel the students due to lack of legal settlement. In order that a decision could be rendered prior to the start of the school year, the parties agreed to have the hearing examiner render a decision based upon the record of the hearing conducted by the school, additional documents provided by Petitioners, and written statements submitted by the parties. Upon review of the hearing record and additional documents are arguments submitted by the parties, the hearing examiner determined the students and their parents resided within the boundaries of the South Bend Community School Corporation. As such, they have legal settlement within the school corporation. The decision to expel the students due to lack of legal settlement was reversed.

No objections to the hearing examiner's recommended decision have been filed.

BEFORE THE INDIANA STATE BOARD OF EDUCATION

In Re the Matter of:)	
G.G., Ka.G. and Ky.G.,)	Cause No.: 1007005
Petitioners,)	
)	
v.)	
)	
South Bend Community School)	
Corporation,)	
Respondent)	

Expulsion Due to Lack of Legal Settlement
Right to Attend School
Pursuant to I.C. 20-33-8-17 & I.C. 20-26-11-15

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

Procedural History

The Students¹ were expelled from school due to lack of legal settlement on June 10, 2010, following an expulsion meeting conducted on June 8, 2010. The notice of the expulsion contained appeal rights advising that the Students could appeal this determination to the school board by submitting the appeal in writing within 10 days. The written appeal was to be submitted to the Superintendent's Office of the South Bend Community School Corporation (School). By letter dated June 18, 2010, to the School, the Students sought to appeal the determination that they lacked legal settlement within the School corporation. No evidence or record of any appeal conducted by the local school board was presented in this matter. It appears from the documents submitted that the School's attorney contacted the State Board Administrator inquiring as to the procedures for initiating an appeal before the State Board of Education.

On July 1, 2010, the State Board Administrator received a letter from Amy M. Steketee, Esq., Baker & Daniels, indicating the Students wished to appeal the decision of the hearing examiner for South Bend Community School Corporation to expel the Students for lack of legal settlement. Believing the attorney represented the Students herein, the undersigned hearing examiner on July 6, 2010, sent out a notice of appointment to the attorney and the superintendent of the School. A hearing date of August 12, 2010, was subsequently scheduled. On August 6, 2010, the hearing examiner was made aware that Ms. Steketee represented the School. Consequently, the Students had not received a copy of the notice of appointment or the notice of hearing. The hearing examiner held a conference call on August 6, 2010, with the Students' father and the School's attorney. During that call the Students' father indicated he had additional

¹ "Students" shall refer to the Petitioners or the Petitioners' parent, depending upon the context.

documentation to prove residency. The undersigned directed the Students' father to provide the information to the School and then asked the parties to respond on August 9 or 10, 2010, as to whether a hearing was still required.

A second conference call was initiated on August 11, 2010. During that call it was determined that the parties had not reached an agreement. The parties agreed that in lieu of a hearing the parties would submit their exhibits and a written statement or argument setting forth their respective positions.

Both parties timely submitted their evidence and arguments. The School also provided a copy of the transcript of the expulsion meeting conducted by the School. Having reviewed all documentation submitted, the hearing examiner now makes the following findings of fact, conclusions of law, and recommended order.

Findings of Fact

1. The Students, Ka.G., Ky.G., and G.G. are 7th, 6th, and 1st grade students.
2. In August, 2009, the Students' parents sought to enroll them in magnet schools within the South Bend Community School Corporation. The Students were required to pass examinations for acceptance into these programs. Ka.G. and Ky.G. were accepted into the Lasalle Academy. G.G. was accepted into the Kennedy Primary Center.
3. All of the Students are high achievers academically. They value education and sought to attend the magnet schools in South Bend because of the excellent education provided.
4. At the time of applying for admission to the South Bend schools, the Students were residents of Benton Harbor, Michigan. The Students indicated they were moving into South Bend.
5. The Students later provided the School with a copy of a lease to verify their residence within the School corporation. The lease is for two years. The parties to the lease acknowledged that the lease could be terminated at any time without penalty if the Students found other suitable housing.
6. The Students and their parents have resided within the School corporation since August 19, 2009.
7. The house in Benton Harbor in which the Students previously resided is owned by the Students' grandparents.
8. The Students are actively involved in basketball and participate in the sport both in school and in out-of-school organizations. The Students are excellent athletes and often travel to play in games and tournaments.

9. The Students and their parents spend the majority of their time in the home they rent in South Bend, but often travel on weekends for sporting events, to visit family in Michigan, or for vacation.
10. In September or October, 2009, the School's Athletic Department received an anonymous phone call regarding the Students, indicating the Students lived in Benton Harbor, Michigan. The Athletic Department reviewed the lease provided by the Students and was satisfied the Students provided proof of residency.
11. In February, 2010, the Athletic Director was asked to investigate the Students' legal settlement because a Board Member had reported the Students were living outside the School's attendance boundaries. He concluded it was likely the Students were living in Michigan. His conclusions were based upon his review of the lease, which he found suspect; a newspaper article; learning that the property the Students were renting was not owned by the landlord; observing that the Students did not return to their South Bend home after a Friday night basketball game; and learning that the Students did not ride the school bus.
12. The Students practiced at the gym every morning before school. Their parents then transported them to school each morning.
13. The parents parked their car in the garage so that it was not visible from the street.
14. The Students were asked to provide additional documents including a letter from a pastor, checking account statements, and statements from people in the community.
15. Because portions of the lease were not legible, the Students were asked to provide another copy of the lease. Rather than providing a photocopy, the Students provided a new original lease agreement. The terms of the new lease provided to the School were the same as in the original, but it was not an exact photocopy.
16. An expulsion meeting was held on June 8, 2010. On July 10, 2009, the Superintendent sent the Student's a letter advising them of their expulsion unless acceptable proof of residency was provided by August 13, 2010. The expulsion examiner's Summary of Evidence; Determination and Recommendation was enclosed with the Superintendent's letter.
17. The Students had been advised that three documents proving residency were required. The School provided the Students with a list of acceptable items for proof of residency:
 - a. Food Stamp I.C. Card
 - b. Documentation from Welfare Dept.
 - c. Letter of Residence
 - d. Driver's License
 - e. State I.D.
 - f. Rental/lease/mortgage receipt
 - g. Employment Check Stub
 - h. Forwarded (personal) Mail

- i. Pastor (letter)
 - j. Social Security Office
 - k. Legal Documents
 - l. Utilities/bills
 - m. Auto Registration
18. The Students' documentation showing residency within the School corporation included the following:
- a. Letters from the landlord and pastor indicating residence
 - b. Driver's license
 - c. Auto registration
 - d. Lease agreement
 - e. Sublease agreement from owner of the house
 - f. Letter from employer indicating South Bend address
 - g. Forwarded mail
 - h. Bank statement
 - i. Letter from attorney
 - j. Utility bills
 - k. South Bend library card
 - l. UPS mail
 - m. Doctor bills
 - n. Affidavit indicating the Students and parents were included in the report to the USA Census as residing in the School corporation

Conclusions of Law

1. The Indiana State Board of Education (SBOE) has jurisdiction to determine legal settlement and the right to attend school in any school corporation. Indiana Code 20-26-11-15.
2. Any Finding of Fact deemed to be a Conclusion of Law is hereby denominated as such. Any Conclusion of Law deemed to be a Finding of Fact is hereby denominated as such.
3. Prior to the 2009-2010 school year, the Students resided with their parents in Michigan and did not have legal settlement within the School corporation.
4. During the summer of 2009, the Students' parents decided to move to South Bend so that their children could attend school in the School corporation.
5. Although the Students sometimes travel on weekends or visit relatives in Michigan, the Students reside with their parents in South Bend.
6. " 'Legal settlement' is generally synonymous with 'residence,' 'resides,' or other comparable language, and means a permanent and principal habitation which a person uses for a home for a fixed or indefinite period, at which the person remains when not called elsewhere for work, studies, recreation, or other temporary or special purpose. The term is not synonymous

with ‘legal domicile.’ I.C. 20-8.1-6.1-1(b).² This doesn’t mean that ‘legal domicile’ and ‘legal settlement’ cannot ever serve to define each other.

“ ‘Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there.’ *State Election Bd. v. Bayh*, 521 N.E.2d 1313, 1317 (Ind. 1988). ‘A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.’ *Yonkey v. State*, 27 Ind. 236 (Ind. 1866), *Bayh*, *id.*, at 1317. ‘Intent and conduct must converge to establish a new domicile.’ *Bayh*, *id.*, at 1318. ‘Physical presence in a place is only one circumstance in determining a domicile.’ *Id.* ‘Residency requires a definite intention and ‘evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable.’ *In re Evrard* (1975), 263 Ind. 435, 440, 333 N.E.2d 765, 767.’ *Id.* ‘If the departure from one’s fixed and settled abode is for a purpose in its nature temporary, whether it be business or pleasure, accompanied with an intent of returning . . . as soon as such purpose is accomplished; in general, such a person continues to be an inhabitant . . . for all purposes of enjoying civil and political privileges, and of being subject to civil duties.’ *Culbertson v. Board of Commissioners of Floyd County* (1876), 52 Ind. 361, 368-69.

In Re the Matter of S.S., Cause No. 0401001, Dana L. Long, Hearing Examiner, decided by the SBOE on June 3, 2004.

In *S.S.*, the student was determined not to have legal settlement in the new school corporation where his parents maintained a residence in another school corporation and rented an apartment in the new school corporation. The School cites this case in its argument against a finding of legal settlement. The facts, however, are vastly different. In *S.S.* the parents did no more than rent an apartment. Neither the parents nor the student lived in the apartment. The apartment had no furniture or other furnishings other than a desk.

In the current case, the whole family has moved to South Bend. The parents and the Students reside in South Bend. The parents have repeatedly indicated their intent to live in the South Bend Community and to have their children attend the South Bend schools.


7. The Students have legal settlement within the South Bend Community School Corporation.

² In 2005, Title 20 was recodified. This provision is now found at I.C. 20-26-11-1.

Order

The School's decision to expel the Students due to lack of legal settlement is reversed. The Students have legal settlement within the South Bend Community School Corporation.

Dated: August 24, 2010



Dana L. Long, Hearing Examiner for the
State Board of Education
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APPEAL RIGHT

Any party wishing to file objections to this recommended decision may do so in writing within fifteen (15) calendar days from the receipt of this order. The basis of any objections must be stated with particularity. A party must cite to any Finding of Fact, Conclusion of Law, or Order with which the party takes exception. Objections must be mailed to Mr. Jeffery P. Zaring, State Board Administrator, Indiana Department of Education, Room 229, State House, Indianapolis, Indiana 46204-2798. This order will become final after fifteen (15) calendar days with no further action required by the Indiana State Board of Education unless objections are filed or the Board, by majority vote, decides to set this cause for oral argument. In either situation, you will be advised of the date the Board will consider the case.

Any party filing objections or responding to same must provide a copy of such written objections or written responses to the representative of the other party. Failure to do so may result in dismissal of your appeal.

Copies to (via certified mail):

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cc: Jeffery P. Zaring, State Board Administrator